

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN ALLAN WALTERS**, on March 13, 2001 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Allan Walters, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Dee Brown (R)
Rep. Donald L. Hedges (R)
Rep. Hal Jacobson (D)
Rep. Larry Jent (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Gay Ann Masolo (R)
Rep. Douglas Mood (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)

Members Excused: Rep. Debby Barrett, Vice Chairman (R)
Rep. Norma Bixby (D)
Rep. Michelle Lee (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Ruthie Padilla, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 249, 3/7/2001; SB 443,
3/7/2001; SB 306, 3/7/2001
Executive Action: None

HEARING ON SB 249

Sponsor: SEN. KEN TOOLE, SD 27, HELENA

Proponents: Tim Davis, Montana Smart Growth Coalition
Joe Mazurek, City of Great Falls

Opponents: Peggy Trenk, Montana Association of Realtors
William Spilker, Realtor
Bill Bayless, Department of Administration

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0}

SEN. KEN TOOLE, SD 27, Helena, submitted written testimony.
EXHIBIT(sth57a01)

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 6.2}

Tim Davis, Montana Smart Growth Coalition, submitted written testimony on behalf of Arhtur Scibeli **EXHIBIT**(sth57a02) and on behalf of Caron Cooper **EXHIBIT**(sth57a03). He told the committee that basically these letters spelled out why this bill was a good idea and why the 27 groups of the Montana Smart Growth Coalition urged do pass on this bill. He went on to tell the committee why he thought this bill was a good idea.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 10.5}

Peggy Trenk, Montana Association of Realtors, told the committee that her members had asked her to come and express their opposition to this bill because of a basic principle that they believed in those kinds of decisions they needed to let the marketplace work. When state government told business where they should locate, that was interfering with the marketplace.

William Spilker, Realtor, told the committee that he had been in the real estate business for nearly 30 years in this community. He had leased a number of properties to the state of Montana. He voiced his opposition to SB 249 because of four reasons. He urged the committee to table the bill because it was not fair, it was not necessary, it put additional work onto the state agency, and it could cause and increase in taxes.

Bill Bayless, Department of Administration, said that after extensive discussion and consideration, they had to oppose the bill. He expressed his appreciation to Sen. Toole for the consideration he had given them, however they had continued to look at it and after further study didn't feel this was in the best interest of the state. He explained that the Department of Administration did not lease space, agencies do. They were charged with helping them locate spaces, negotiating the leases, finding the best rates possible, and they have a legislative mandate to co-locate agencies when they can and was feasible. He went on to explain the procedure they used when looking for a location.

Proponents' Testimony:

Joe Mazurek, City of Great Falls, apologized to the committee because he had been across the hall at another hearing and missed the proponent testimony. He wanted to register support of the bill from the City of Great Falls, if that was possible.

REP. ALLAN WALTERS responded that he had just done it.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 24.6}

REP. FRANK SMITH asked **William Spilker** if he had talked to any other Realtors from across the state. **William Spilker** responded that he had not talked to them, but that he did support the position of his association that they believed the marketplace should determine location. **REP. SMITH** said that the bill read to consider downtown areas whenever feasible and cost effective. He asked if **William Spilker** understood that. **William Spilker** responded that he did understand that.

REP. DONALD HEDGES asked **Bill Bayless** if when they developed specifications for leasing did they require a certain amount of customer parking space. **Bill Bayless** responded that they did, and explained the ways that was done.

REP. DEE BROWN asked **Bill Bayless** for some kind of idea how many square feet the state currently leased and at what rate it had grown in the last five years. **Bill Bayless** referred the question to **Garett Bacon, Department of Administration**. **Garett Bacon** responded to **Rep. Brown's** question. He told the committee that they leased around 940,000 square feet of space throughout Montana. 444,000 square feet of that was in Helena. **REP. BROWN** asked at what rate that had grown in the last five years. **Garett**

Bacon answered that it had appreciated at a rate of about 10% per year. **REP. BROWN** asked if he was saying that in five years state leasing had increased 50%. **Garett Bacon** confirmed that was what he was saying.

REP. DEE BROWN asked **SEN. KEN TOOLE** if they allowed SB 249 into law, would the bill somehow hold the state hostage to the downtown building owners. **SEN. KEN TOOLE** responded that he did not think so, and that was certainly not his intent. He just hoped that the state would put in policy to consider locating downtown.

REP. TOM DELL asked **Peggy Trenk** to consider her comment about letting the marketplace work. He told her his concerns about the downtown area in Billings and asked her to reconsider this let the marketplace work concept. **Peggy Trenk** responded that she wouldn't disagree with him about the viability of downtown. She told of downtown projects addressing this concept as a marketplace response. She voiced her opinion that this was not a appropriate state role to require that they look downtown.

REP. TOM DELL asked **Tim Davis** if he would give his perspective on this as well. **Tim Davis** responded that his perspective was that state agencies should be doing what the bill asked. It just said that they should look downtown, they don't have to locate downtown if it didn't work out.

REP. DOUG MOOD asked **Bill Bayless** if he considered downtown as an alternative. **Bill Bayless** responded that they did. When they looked at a community, they looked at the whole community and the agency needs dictated where they went. His concern was that this bill would either have no effect, or if they tried to follow it, it would remove some of their options. **REP. MOOD** asked what made the downtown buildings \$3 per square foot more expensive. **Bill Bayless** responded that it was the going rate because of the parking situation. **REP. MOOD** said that it was his understanding that one of the most expensive buildings to build was a parking garage and asked if that was correct. **Bill Bayless** responded that he didn't know that. He added that if you build a multi-level parking garage the cost worked out to be about \$10,000 per parking space, which was more expensive than using an open lot somewhere.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 6.4}

SEN. KEN TOOLE closed on SB 249.

HEARING ON SB 443

Sponsor: SEN. ED BUTCHER, SD 47, WINIFRED

Proponents: Marilyn Lewis, Montana Genealogy Society
Susan Ohnstad, Lewis and Clark Genealogy Society
Betty Lee Babcock
Anita Feltis, Family History Center
Patricia Marchington, Park County Genealogy

Opponents: Peggy Borne, Great Falls City Clerk
John Northy, Legislative Audit Division
Robert Throssell, Montana Association of Clerks
and Recorders and Montana County
Treasurers Association
Mary Phippen, Montana Association of Clerks of
District Court
Lynda Brannon, Montana Association of Business
Officials
Chuck Christiansen, Montana State Fund
Stan Kaleczyc, Montana Municipal Insurance
Authority
Janice Doggett, Montana Secretary of State Office

Informational: Arnie Olsen, Montana Historical Society

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 12.5}

SEN. ED BUTCHER, SD 47, WINIFRED, introduced SB 443. He told the committee that he had become aware of the indiscriminate, wholesale of historic documents to researchers and thought this needed to be addressed. He said that this bill would have a great impact on Montana history. He gave the committee a brief explanation of the different parts of the bill. He told the committee that he did not sign the fiscal note because it was preposterous. The resistance to the bill had come from bureaucrats. He told the committee that there was no cost to the government for this bill. The clerks and recorders were already supposed to be following procedures before sending documents to the dump. He went on to describe some of his experiences with historical research.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 25.2}

Marilyn Lewis, Montana Genealogy Society, told the committee that she had been doing genealogy for over 30 years and that she thought the only records most people thought that they were interested in were vital records: birth, death, marriage, and land. There were other records in the court houses that they used also. She explained the records they used and why, and urged the committee's support of this bill.

Susan Ohnstad, Lewis and Clark Genealogy Society, told the committee that she understood the importance of these seemingly insignificant records, and urged the committee to support the bill.

Betty Lee Babcock told the committee that due to technology, the science of genealogy was becoming more important day by day. She recounted to the committee her experiences with genealogy and how she became interested in genealogy. She urged the committee to support the bill.

Anita Feltis, Family History Center, told the committee that she saw people coming to their center every week that spend hundreds of thousands of dollars searching these types of records they were thinking about destroying here in Montana.

Patricia Marchington, Park County Genealogy Society, told the committee that she had been a researcher for over 20 years. She said that preserving history meant to preserve people's ancient artifacts, people's written documents and records. Those things that were left behind told them what people were like, who they were, what they were like, and what things they did. She showed the committee some examples of historic records that had been thrown out in the trash.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 7.3}

Peggy Borne, Great Falls City Clerk, told the committee that she had been in that position for 12 years. She said that she shared the passion of the testimony of the genealogists and acknowledged her responsibility to keep those records, but said that she opposed the bill for two reasons: the all encompassing sweep of local government records and the constitutionality of the amendment that deals with records that were protected by the

constitution. Those records were personal and law enforcement records. She explained the work that had been done to develop record retention, and teach people what needed to be done without legislative intervention. She offered three simple solutions to the committee: expand the makeup of the local government records advisory committee to include a voting member from the genealogy society, invite the committee to review their procedures and give them some advice, and she asked the proponents and the bureaucrats to sit down and communicate.

John Northy, Legislative Audit Division, told the committee that he served as a member of the state records committee. He explained to the committee that in 1977 the legislature had enacted a State Records Management Act. Under the state records procedures, retention schedules were set for state records. He said that the system worked except for the people who ignored the current law and retention schedules. He pointed out the high cost of giving public notice before the destruction of records. He also pointed out the places that violated constitutional rights. He agreed with the suggestion to add a member from the genealogy society to the records advisory committee. He urged the committee to table this bill and let the interested parties work together to find another solution.

Robert Throssell, Montana Association of Clerks and Recorders and Montana County Treasurers Association, told the committee that the records they keep in their offices were public records. The disposal and privacy issues were a concern to them also. They were also concerned about the public notification requirements in the bill. He proposed an amendment **EXHIBIT(sth57a04)** that would create a clearing house with the local government public records committee.

Mary Phippen, Montana Association of Clerks of District Court, submitted information regarding the definitions of public records **EXHIBIT(sth57a05)** and **EXHIBIT(sth57a06)**. She urged the committee to consider the amendments, and said that they would withdraw their opposition if the amendments were made.

Lynda Brannon, Montana Association of School Business Officials, explained that her organization was made up of various clerks in all of the school districts who also fell under the requirements in the bill. She told the committee that by putting all the notices in the paper basically created an unfunded mandate and urged the committee to amend or table the bill.

Chuck Christiansen, Montana State Fund, voiced his concerns about the bill as it was written.

Stan Kaleczyc, Montana Municipal Insurance Authority, explained that the groups he represented were established under the inter-local government cooperation act, which made them a public body by Montana statute. Their concerns were the same as the previous opponents with one addition concern regarding the confidential records they maintained. They weren't sure how they could comply with the bill.

Janice Doggett, Montana Secretary of State Office, explained how her office handled records and voiced their concerns about the bill. She submitted information to the committee regarding the Secretary of State Bob Brown's request for an audit of the Record Management Bureau **EXHIBIT (sth57a07)**.

Informational:

{Tape : 2; Side : A; Approx. Time Counter : 13.1}

Arnie Olsen, Montana Historical Society, provided informational testimony **EXHIBIT (sth57a08)**.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 16.3}

REP. ALAN OLSON questioned **Arnie Olsen** about the step on the handout that required unanimous approval before records were disposed of, and could one person hold up the disposal of records. **Arnie Olsen** responded that the concept was to be careful not to dispose of anything inappropriately. **REP. OLSON** asked if he had direct knowledge that was the way things were being done. **Arnie Olsen** responded he did not have direct knowledge because the procedure had not been in place for a long time. He said that education was important to tell people what the requirements were and how important they were.

REP. FRANK SMITH asked **Peggy Borne** if they microfilmed any of the records. **Peggy Borne** responded that the City of Great Falls did minimal microfilming because of expense. She preferred to preserve the actual documents. She explained what she did microfilm and why. **REP. SMITH** asked what the next step was after they preserved them, who they offered them to. **Peggy Borne** responded that she worked closely with the local Historical Society to transfer custody, not ownership, of records.

REP. FRANK SMITH then asked **Lynda Brannon** on school records if they notified the family before they destroyed the records.

Lynda Brannon said that she was not aware of any provisions requiring that.

REP. DEE BROWN asked **Patricia Marchington** when the books she had shown the committee were retrieved out of the dumpster. **Patricia Marchington** responded that it was within the last two years, and explained how they were retrieved and who retrieved them. **REP. BROWN** asked **Patricia Marchington** how she would feel as a records keeper about adding someone from the genealogical society to the records retention committee. **Patricia Marchington** said that she had not seen any of those committees and didn't think that they existed in most local communities. **REP. BROWN** said that now that they had a new Secretary of State that was looking at audits and some of these concerns, did she feel that would be a good first step. **Patricia Marchington** responded that if it was immediate. She added that e-mail was a good way to communicate notifications.

REP. DEE BROWN then asked **Janice Doggett** how long the committee had been in existence and what was the Secretary of State's future plan to do something about the retention of records for historical purposes. **Janice Doggett** responded that there were two committees that had been established by statute. She explained what those committees were and the retention schedules they were supposed to use. **REP. BROWN** asked if Secretary of State Bob Brown was going to be aggressive in the education of city and county record keepers about the importance of these records. **Janice Doggett** said she knew he was concerned and that was why he had asked for the audit.

REP. ALAN OLSON questioned **Janice Doggett** if they could put a time limit on things that fell under the right to privacy. **Janice Doggett** responded that in her opinion you could not, but the Montana constitution said that a person had the right to privacy absent of compelling state interest. The compelling state interest triggered the exposure, not any kind of time limit.

REP. HOLLY RASER asked **Sen. Ed Butcher** if this was new testimony to this hearing, or had it been also given in the Senate committee. **Sen. Butcher** responded that the testimony had been expanded, but all of the points had been covered in during Senate testimony. **REP. RASER** then asked what the possibility was of working together with the two groups. She asked him if it was his opinion that the process was too new, because it looked like there were some guidelines in place for the disposal of records. She wanted to know where he felt the breakdown was in the process. **Sen. Butcher** responded that everything was in place,

but they didn't have the definition in statute they told them they needed to do certain things. He explained that the bill was written with a great deal of latitude for the rule-making, there were some problems with interpretation. **REP. RASER** asked if he had a copy of the flowchart, and if this bill simply added into the procedure a requirement that people be notified before documents were destroyed. She asked him where that would occur on the flowchart. **Sen. Butcher** said that he left it open, it could be done at the county level or at the state level. He said that it didn't require legal notice, that was purposely left out.

REP. RASER asked if an employment evaluation was a public document. **Janice Doggett** responded to her question by saying that it was confidential, but what this bill said was that after a 50-year period, then the statute applied.

REP. RICK RIPLEY asked **Sen. Ed Butcher** his opinion about the 50-year period and right to privacy. **SEN. BUTCHER** said that anytime you get into privacy issues it was going to fall back onto whatever precedent had been set in court decisions. He felt that it would come through as an administrative process later. **REP. RIPLEY** asked if what he was saying was that it was okay to leave in 50 years and it would be decided later. **Sen. Butcher** said that there were some documents that would be 50 years old next year, and it would up to the attorney general to make a ruling. This would establish case law and he didn't feel they should legislate case law. **REP. RIPLEY** asked if he was familiar with any case law up to this point regarding right to privacy. **Sen. Butcher** responded that he wasn't an attorney and that wasn't one of his areas of knowledge.

REP. ALAN OLSON asked **Sen. Ed. Butcher** if local government committees set up in the statutes could handle the requirements in this bill by just adding a step. **Sen. Butcher** responded that it was possible and this bill was just to get people to focus on this issue. **REP. OLSON** asked if they needed to give these committees a way to enforce their rules. **SEN. BUTCHER** said that they needed to look at the issue being raised in the statute and see how it was going to work. His constituency had voiced to him their difficulty in dealing with the clerks and recorders regarding the records.

REP. ALAN OLSON asked **Peggy Borne** if she was on the committee. **Peggy Borne** responded that she was. **REP. OLSON** asked how they got the information out to the clerk and recorders. **Peggy Borne** explained that every person on the committee had to agreed to go out and teach workshops. She went on to tell the committee about the workshops she had conducted. **REP. OLSON** asked **Peggy Borne** if there was any funding for this committee. **Peggy Borne** responded

that the City of Great Falls bore the cost of her being on the committee. **REP. OLSON** asked if it was set up in the administrative rule. **Peggy Borne** responded that it was not. **REP. OLSON** asked if the Secretary of State could set it up in an administrative rule. **Peggy Borne** said that it was her understanding that could be done.

REP. ALAN OLSON redirected his question to **Janice Doggett**. **Janice Doggett** responded that it was their duty to develop a retention schedule. **REP. OLSON** asked if the Secretary of State's office could set this up in an administrative rule. **Janice Doggett** said that as long as the process didn't exceed their statutory authority. **REP. OLSON** asked if someone from one of the historical societies could be involved. **Janice Doggett** explained that the makeup of the committee was statutorily prescribed.

REP. HOLLY RASER asked **Peggy Borne** who was in charge of the procedures. **Peggy Borne** said that the local government records advisory committee oversaw the creation of the document. **REP. RASER** asked what department the local government records advisory committee was under. **Peggy Borne** responded that it was the Secretary of State's office. **REP. RASER** asked if it was possible to add notification to the procedure. **Peggy Borne** responded that it was possible and explained.

REP HOLLY RASER commented that they seemed to have a lot of concerns in common, and asked **SEN. ED BUTCHER** if he would be willing to work to see that the language was changed to be more workable for some of the opponents. **SEN. BUTCHER** said that this bill had brought the issues to the forefront, and that was what it was intended to do. He would like to see the steps laid out and then the Secretary of State would have direction as what to do.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 27.1}

SEN. ED BUTCHER closed on SB 443.

HEARING ON SB 306

Sponsor: **SEN. VICKI COCCHIARELLA, SD 32, MISSOULA**

Proponents: **Mike O'Connor, Montana Public Employee Retirement Administration**

**Tom Schneider, Montana Public Employees
Association**

Tom Bilodeau, MEA-MFT

**Pat Clinch, Montana State Council of Professional
Firefighters**

Glen Leavit, Montana University System

Opponents: None

Opening Statement by Sponsor:

{Tape : 3; Side : B; Approx. Time Counter : 4.2}

SEN. VICKI COCCHIARELLA, SD 32, MISSOULA introduced SB 306, explaining the benefits of the bill to long-term committed employees. She said that the only opposition she had to bill was from those who wanted to be included in the bill.

Proponents' Testimony:

{Tape : 3; Side : B; Approx. Time Counter : 6.9}

Mike O'Connor, Montana Public Employee Retirement Administration, provided the committee with information **EXHIBIT(sth57a09)**, graphs **EXHIBIT(sth57a10)**, and amendments **EXHIBIT(sth57a11)**. He told the committee that his office looked at it as a career bonus provision, and the retirement program served as a recruitment tool. It also provided the older employees with a way to retire so that the younger employees could have a career advancement opportunity. He urged the committee's support and said that they had a technical amendment they wanted to add.

Tom Schneider, Montana Public Employees Association, told the committee that they had been involved in the issue for a long time. He provided the committee with a handout **EXHIBIT(sth57a12)** that showed the organization's support for the bill. He explained why they supported the bill. Reading a line out of an e-mail he had received, he showed that it was not the intent of SB 306 to encourage people who had worked at least 25 years to retire. He went over the examples given in the handout, and told the committee that the proposed benefits encouraged an employee to work 25 years, and if they had worked 25 years to go ahead and work 30 years because it increased their retirement benefits. He gave some examples of why they should reward people for staying.

Tom Bilodeau, MEA-MFT, said that they saw this as a longevity bill that encouraged employees to stay. He gave examples of how it would benefit employees and employers.

Pat Clinch, Montana State Council of Professional Firefighters, told the committee that they were in support of this bill for the firefighters that were in the public employee retirement system.

Glen Leavit, Montana University System, told the committee that he did not have any information to add, and they supported this bill.

Questions from Committee Members and Responses:

{Tape : 3; Side : B; Approx. Time Counter : 23}

REP. LARRY LEHMAN asked **Mike O'Connor** how they would advise all of the employees that it would be to their benefit to work an additional five year. **Mike O'Connor** told the committee that they send out periodic newsletters and hold group meetings. **REP. LEHMAN** asked **Mike O'Connor** if he had any kind of estimate of how many of their 30,000 members would take advantage of the retention offer. **Mike O'Connor** responded that they knew that the average employee was thinking of retiring at age 60. He said it was hard to say how many because it was a individual choice.

REP. GAY ANN MASOLO asked **SEN. VICKI COCCHIARELLA** how many employees they have working for the state that had 25 years of service. **SEN. COCCHIARELLA** pointed out where the numbers were on the sheets that **Mike O'Connor** had handed out.

REP. RICK RIPLEY asked **Mike O'Connor** if he was reading on the sheets that the average retirement age was 60 years old. **Mike O'Connor** responded that was correct. **REP. RIPLEY** asked if the average number of years of service was 19. Taking that into consideration he wondered how many people would actually take advantage of this program. **Mike O'Connor** pointed out some statistics on the sheet, and explained who they were trying to target.

REP. DOUG MOOD asked **Mike O'Connor** if he understood from the charts that the money they were already spending would pay for these retirement benefits. **Mike O'Connor** said that it would pay for all the debt service, then going forward they would need to make sure that it was accrued for. **REP. MOOD** asked if as long as they were collecting the normal costs, the unfunded liability should not increase. **Mike O'Connor** responded that was correct. **REP. MOOD** asked if he had read the chart correctly that they had spent approximately \$400 million. **Mike O'Connor** responded yes, approximately.

CHAIRMAN ALLAN WALTERS questioned **Mike O'Connor** if there was a possibility that with a downturn in the stock market they would be back in two years taking money from the general fund to keep this program solvent. **Mike O'Connor** responded that he didn't. He saw a downturn as a buying opportunity to get into the market. **CHAIRMAN WALTERS** asked what kinds of stocks they had in the portfolio. **Mike O'Connor** responded as to how the Board of Investments generally invested in stock.

Closing by Sponsor:

{Tape : 4; Side : A; Approx. Time Counter : 0.5}

SEN. VICKI COCCHIARELLA closed on SB 306.

ADJOURNMENT

Adjournment: 11:25 A.M.

REP. ALLAN WALTERS, Chairman

RUTHIE PADILLA, Secretary

AW/RP

EXHIBIT (sth57aad)